IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7963 of 2004
with
SPECIAL CIVIL APPLICATION No 7964 of 2004
with
SPECIAL CIVIL APPLICATION No 7966 of 2004
with
SPECIAL CIVIL APPLICATION No 7967 of 2004
with
SPECIAL CIVIL APPLICATION No 7969 of 2004
with
SPECIAL CIVIL APPLICATION No 8472 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

DASHAVADA SEVA SAHKARI MANDALILIMITED
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Application No. 7963 of 2004
MR HARIN P RAVAL for Petitioner No. 1-2
MR KB TRIVEDI, LD.ADDL.ADVOCATE GENERAL WITH
MS SK VISHEN, LD.AGP for Respondent No. 1-4,7-8
DS AFF.NOT FILED (N) for Respondent No. 5

MR SN THAKKAR for Respondent No. 6

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 06/09/2004

COMMON ORAL JUDGEMENT

1. Draft amendment is allowed. The petitioners to carry out the amendment by 8th September, 2004.

2. In all these petitions, Rule. Ms.Sangeeta Vishen, learned AGP waives service of rule on behalf of State.

3. In all these petitions, the respective petitioners have approached this Court under Article 226 of the Constitution of India, initially challenging the show-cause-notice issued by the concerned authority i.e. District Registrar, Co-operative Societies, Patan, and also the order passed by the District Registrar on 22.6.2004 in superseding the Managing Committee of the respective petitioner's No.1 society.

4. It appears that, being aggrieved and dissatisfied with the said order dated 22.6.2004, the respective petitioners had challenged the same before the appellate authority/revisional authority, an application for stay was submitted but as the authority did not pass any order, the petitioners had preferred these petitions under Article 226 of the Constitution of India.

5. This Court passed an order on 9.7.2004 staying the order passed by the District Registrar, Co-operative Societies, Patan, on certain conditions (order dated 9.7.2004), and thereafter a further order came to be passed on 3.8.2004, and the hearing before the appellate authority/revisional authority was fixed on 16.8.2004. Thereafter the appellate authority has passed an order in all the aforesaid petitions on 26.8.2004 by remanding the matter to the District Registrar, Co-operative Societies, Patan, by partly allowing the aforesaid appeals, and passed an order that the order passed by District Registrar on 22.6.2004 is stayed till the matter is decided afresh by the District Registrar, Co-operative Societies, Patan. Those orders dated 22.6.2004 are challenged by way of draft amendment which is allowed today.

6. Mr.Harin Raval, learned advocate for the

petitioners had submitted that, inspite of the fact that the appellate authority has found that the order passed by the District Registrar, Co-operative Societies, Patan, dated 22.6.2004 is bad in law, for the reasons stated in the said order, instead of quashing and setting aside the order dated 22.6.2004, the order is only stayed and the matter is remanded to the District Registrar, Co-operative Societies, Patan, for deciding the same afresh. He has submitted that, in fact, the appellate authority ought to have quashed and set aside the order passed by the District Registrar, Co-operative Societies, Patan, dated 22.6.2004 instead of staying the same.

7. Mr.Kamal B.Trivedi, learned Additional Advocate General, who appears on behalf of the State Government, has submitted that, pursuant to the remand order, now the hearing is fixed by the District Registrar, Co-operative Societies, Patan on 8th September, 2004, and the petitioners may appear before the authority so that appropriate orders can be passed after giving an opportunity to them.

8. Mr.Harin Raval, learned advocate appearing on behalf of the petitioners states that, all the petitioners will appear before the District Registrar, Co-operative Societies, Patan on 8th September, 2004, and will argue their case before the authority.

9. In view of the fact that the appellate authority has remanded the matter and directed the District Registrar, Co-operative Societies, Patan, to decide and dispose of the dispute and the show-cause-notice with regard to supersession afresh, it was incumbent on the part of the appellate authority to infact quash and set aside the order passed by the District Registrar, Co-operative Societies, Patan, dated 22.6.2004, and ought not to have passed the order of only staying the order passed by the District Registrar, Co-operative Societies, Patan dated 22.6.2004. In that view of the matter, the order passed by the appellate authority on 26.8.2004 passed in each of the appeals, arising in the aforesaid petitions are modified, to the extent that, the order passed by the District Registrar, Co-operative Societies, Patan, dated 22.6.2004 are hereby quashed and set aside. The District Registrar, Co-operative Societies, Patan, is directed to decide and dispose of the respective cases pending before him on remand made by the appellate authority, on 8.9.2004 as agreed between the parties.

10. For the reasons stated above, the order passed by the appellate authority on 26.8.2004 passed in respective

appeals are modified to the aforesaid extent. Rule is made absolute to the aforesaid extent in each of the petition with no order as to costs.

(M.R. Shah, J.)

syed/